

Legislative Ethics Board



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101 LEGISLATIVE BUILDING
PO BOX 40482
OLYMPIA, WA 98504-0482
360-786-7343
www.leg.wa.gov/leb

JENNIFER STRUS - COUNSEL
Jennifer.Strus@leg.wa.gov

COMPLAINT 2019 – No. 2

In re Claire Wilson
June 14th, 2019

ORDER OF DISMISSAL: LACK OF REASONABLE CAUSE AND NO JURISDICTION

I. NATURE OF THE COMPLAINT

The complaint alleges that Respondent violated RCW 42.52.180 (prohibiting the use of public resources for political campaigns) by reserving the Washington Room in the Pritchard Building on behalf of Emerge Washington (Emerge WA), a candidate training organization, and by recognizing Emerge WA in a point of personal privilege from the Senate floor.

II. JURISDICTION

The Board has personal jurisdiction in this matter. It has subject matter jurisdiction over the room reservation allegation, but lacks subject matter jurisdiction over the floor speech allegation. RCW 42.52.320.

III. PROCEDURAL HISTORY

The complaint was received by Board counsel on February 27, 2019 and was the subject of Board discussions at regularly scheduled meetings on May 9th and June 14th, 2019.

IV. FINDINGS OF FACT

There is reasonable cause to believe the following are the pertinent facts of the case.

A. Background

1. Respondent is a member of the Senate representing the 30th legislative district.

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2. Respondent was a member of the 2017 Emerge WA cohort.
3. On January 2, 2019, Karen Besserman, Executive Director of Emerge WA, requested that Bayley Dodd, Respondent's Legislative Assistant (LA), reserve the Washington Room in the Pritchard Building for February 25, 2019 to be used for "Emerge WA candidate training." At that time, Ms. Dodd was a newly hired LA.
4. In response to this request, Ms. Dodd told Ms. Besserman that she (Dodd) was unsure whether Emerge WA could use that room for the purpose for which they wanted to use the room. Ms. Besserman told Dodd that it was an okay use; Emerge WA had used the Washington Room the previous year and "everything was okay." As a result, Ms. Dodd scheduled the room.
5. Ms. Dodd did not discuss this room reservation request with Respondent and, as a result, Respondent was unaware, until February 25, 2019, that her LA had reserved the room for use by Emerge WA.

B. About Emerge Washington

6. The mission of Emerge WA is to "increase the number of Democratic women leaders from diverse backgrounds in public office all across the state and in all offices through recruitment, training, and providing a powerful network."
7. According to the Emerge WA website, they "offer the only in-depth, multi-month, 80-hour, cohort focused, training program that provides aspiring female leaders with cutting-edge tools and training to run for elected office and elevate themselves in our political system." Their website provides "as a program member, you will be exposed to a variety of campaign and election experts."
8. Members of the Emerge WA signature program meet one weekend a month and receive comprehensive training on the following topics: public speaking and communications; networking; fundraising; campaign strategy; media and messaging; field operations; technology and new media; equity, diversity and inclusion; ethical leadership; and labor and endorsements.
9. Emerge WA also offers boot camps which are "designed for women who want to run this election cycle." The topics covered in the boot camps include the following: campaign overview & structure; social media; developing campaign plan & strategy; endorsements & power brokers; messaging and media relations; fundraising; field campaigns; and public speaking.
10. The Emerge WA web page states that it "seeks Democratic women who are committed to effective political leadership and are interested in running for office." It selects 20-25 women from across the state each year who it believes have the potential to be political leaders. The women selected each year are considered that year's cohort. Tuition for the 2019 cohort was \$1795 - \$795 is identified as tuition and \$1000 is identified as a fundraising requirement.

11. The training scheduled for February 25, 2019 was part of the signature program.

C. Reserving the Washington Room

12. Although the use of the Washington Room is not solely controlled by the Senate, Senate security nevertheless can reserve the room if requested. The “Guidelines for the Use of Senate Hearing and Conference Rooms” is to be followed when reserving the Washington Room.

13. According to the “Guidelines,” Senate members and staff may reserve Senate rooms and the Washington Room for Senate and legislative business using the room reservation system.

14. The guidelines prohibit the use of the rooms for “directly or indirectly assisting campaigns, . . . promoting or opposing ballot propositions, or . . . advocating specific legislative agendas or positions.”

15. Senate security relies on LAs knowing the guidelines and booking rooms accordingly. Some LAs believe the “Guidelines” are confusing and rely on Senate security to ensure the rooms are appropriately used.

16. The February 25th reservation for the Washington Room was cancelled after the Complainant brought it to the attention of the Secretary of the Senate. The cancellation occurred before Emerge WA used the room.

17. Following the cancellation of the reservation for the Washington Room, the Secretary of the Senate asked the Director of Senate Security to check all existing room reservations and, as a result, cancelled three prospective reservations.

18. The Secretary’s office also conducted refresher training with security staff to be more vigilant about what groups are allowed to reserve Senate rooms on campus.

D. Emerge WA 2019 Cohort

19. The 2019 Emerge WA cohort for the signature program is comprised of 26 members.

20. Of the 26, it appears that, at the time the training was held, at least three members of the cohort were current candidates for public office.

E. Floor Speech

21. On February 25, 2019, Respondent was granted a point of personal privilege on the Senate Floor by the President Pro Tem.

22. Respondent’s floor speech follows: “As a 2017 Emerge graduate, it’s a humbling opportunity to be on the floor today and to have the 2019 class be with us today where

they'll be shadowing legislators and also figuring out where their next steps might be related to running for office across this great state of Washington to represent fifty one percent of the women in this state who really need to be represented at all levels of government. And so I'm just really pleased to have them here today excited that we're opening our doors to the house and having them be here and I would hope that if you see them you would give them a warm welcome. Thanks so much."

F. Use of the Washington Room

23. Emerge WA said that it wanted to reserve the Washington Room for February 25, 2019 merely to have a place for the cohort members to leave their belongings while they were shadowing different legislators.
24. However, the agenda for the events scheduled for February 25, 2019 included a panel of lobbyists who were to have presented at the lunch hour as well as a presentation entitled, "Lessons learned from 35 years in Olympia: How to survive and succeed."
25. Emerge WA never used the Washington Room because their reservation was cancelled before they could use it.

V. CONCLUSIONS OF LAW

A. Use of Legislative Facilities to Assist a Campaign

The Ethics in Public Service Act (Act) prohibits a legislator from using or authorizing the direct or indirect use of legislative facilities to assist the campaign of a person for elective office. RCW 42.52.180. The Act defines "facilities of an agency" to include, but not be limited to, "use of stationery, postage, machines, and equipment, use of state employees of the agency during working hours, vehicles, office space, publications of the agency, and clientele lists of persons served by the agency." This Board has adopted a zero tolerance policy for campaign related personal use of legislative facilities, even if the use does not actually assist a campaign. *In re Young*, 2017 – No. 41; *In re Johnson*, 1996 – No. 1; *Advisory Opinion* 1997 – No. 5; *Advisory Opinion* 1995 – No. 18.

A "candidate" is defined as "an individual who seeks nomination for election or election to public office." RCW 42.17A.005 (9). An individual seeks nomination or election when he or she first:

- (a) Receives contributions or makes expenditures or reserves space or facilities with intent to promote his or her candidacy for office;
- (b) Announces publicly or files for office;
- (c) Purchases commercial advertising space or broadcast time to promote his or her candidacy; or
- (d) Gives his or her consent to another person to take on behalf of the individual any of the actions in (a) or (c) of this subsection. *Id.*

According to Public Disclosure Commission rules, an individual is presumed to be a candidate if there exists a political committee promoting his or her election to public office; the individual has

publicly declared that he or she is a candidate; or the individual receives a contribution or spends surplus funds after the last day of the election cycle. WAC 390-05-200; 390-16-230.

The three 2019 cohort members considered candidates meet the definition above because they have all publicly declared their candidacies. Further, once a person declares as a candidate, the assumption is that he or she has a campaign, whether that campaign is active or not.

It is the Board's opinion that if the Washington Room reservation had not been cancelled before it could be used by Emerge WA, the use of the room by Emerge WA to prepare current and potential future candidates to run for office would have constituted a violation of RCW 42.52.180. Had the scheduled presentations occurred on February 25th, the information imparted by the speakers could have affected the three known candidates' campaigns. The use of legislative facilities in this manner is exactly what RCW 42.52.180 prohibits. It makes no difference that Respondent did not directly make the reservation or was unaware that her LA reserved the room in her name. Respondent's LA works for Respondent, Respondent is responsible for her actions and their lack of communication in this instance should not operate as an excuse for a violation of RCW 42.52.180.

The Board reminds staff that the provisions of RCW 42.52.180 apply equally to them as well as members. However, because the training was cancelled before it began, the Board does not find reasonable cause to believe a violation of RCW 42.52.180 occurred.

Although RCW 42.52.180 was not violated, the policy governing the reservation of Senate rooms appears to need significant clarification. This investigation revealed that it is unclear who is ultimately responsible to ensure that Senate rooms are used for appropriate purposes. Some LAs find the policy confusing, Senate security relies on LAs to ensure the rooms are used for appropriate purposes, and some members are unaware that rooms have been reserved in their names.

B. Floor Speech

The complaint also alleges that the speech given by Sen. Wilson after being granted a point of personal privilege violated RCW 42.52.180. However, Article II, § 17 of the Washington Constitution provides: "No member of the legislature shall be liable in any civil action or criminal prosecution whatever, for words spoken in debate." This matter has never been considered by the Washington courts. To the extent other courts in states with similar constitutional provisions have considered this issue they have determined that if the member is engaged in legislative business at the time he or she makes the statement, he or she is within the privilege afforded by the Constitution. *AGO Opinion No. 134* (May 14, 1962).

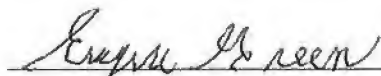
The point of personal privilege is something commonly exercised by members of the Washington Senate. As such, Respondent was engaged in legislative business at the time she made the floor speech. Article II, section 17, then, operates to protect Respondent from civil action for the floor speech she made. In addition, the jurisdiction of the Legislative Ethics Board is limited to enforcement of the Act and rules adopted under it with respect to legislators and legislative branch employees. RCW 42.52.320. The Board lacks subject matter jurisdiction to address constitutional issues. *In re Green*, 2005 – No. 3; *In re Blake*, 2013 – No. 2.

VI. SUMMARY

- A. There is no reasonable cause to believe the reservation of the Washington Room by Respondent for use by Emerge WA constituted a violation of RCW 42.52.180 because the room reservation was cancelled before Emerge WA could use it.
- B. The Ethics Act does not confer jurisdiction upon the Board to adjudicate a constitutional claim.

VII. ORDER

IT IS HEREBY ORDERED that Complaint 2019 – No. 2 is dismissed.



Eugene Green, Chair

Date: 6-14-19_____